

Remarks

The present invention relates to a novel detector apparatus for the analysis of fluorescent light, and instruments containing the detector apparatus. The present application is a continuation of U.S. Serial No. 09/941,357, which issued on January 27, 2004, as U.S. patent 6,683,314. The issued claims of the parent application are drawn to an optical instrument comprising the novel detector apparatus. Applicants herein submit claims drawn to the novel detector apparatus itself.

Status of the Claims following the Office action mailed October 27, 2005

Claims 35-45 are pending.

Claims 35-37, 43, and 45 are rejected.

Claims 38-42 and 44 are objected to.

Claim to Priority

Applicants filed a petition under 37 C.F.R. §1.78(a)(3) to accept an unintentionally delayed claim under 35 U.S.C. §120 for the benefit of a prior-filed application. This petition was filed as a separate communication on January 4, 2006. Upon grant of this petition, the present application claims priority as a continuation application to U.S. Serial No. 09/941,357, filed August 28, 2001, which issued as U.S. patent 6,683,314 on January 27, 2004.

Information Disclosure Statement

The information disclosure statement submitted February 23, 2004, failed to comply with 37 C.F.R. §1.98(a)(2) because copies of the references cited were not provided.

Applicants believe that the information disclosure statement complies with 37 C.F.R. §1.98(a)(2) if the claim to priority under 35 U.S.C. §120 to Serial No. 09/941,357 is entered. Copies of all references cited in the information disclosure statement were submitted in priority application Serial No. 09/941,357, which earlier application is properly identified in the information disclosure statement and is relied on for an earlier effective filing date under 35 U.S.C. §120.

Applicants respectfully request reconsideration of the information disclosure statement in view of the petition for an unintentionally delayed benefit claim.

Claim Rejections under 35 U.S.C. §102

Claims 35, 36, and 43 were rejected under 35 U.S.C. §102(b) as anticipated by Ortyn et al. (US20020071121A1). More particularly, this rejection was based on the detector apparatus shown in Fig. 28 of Ortyn et al., and the description thereof in paragraph [0127]. Applicants traverse the rejection on the basis that this description is not prior art under 35 U.S.C. §102, as discussed further below.

Ortyn et al. is the publication of U.S. Serial No. 09/976,257 (“the ‘257 application”), filed October 12, 2001. The ‘257 application is a continuation-in-part application of U.S. Serial No. 09/820,434 (“the ‘434 application”), filed Mar. 29, 2001, now issued as U.S. Patent No. 6,608,682. Fig. 28 and the description thereof were added as new matter in the filing of the ‘257 application and were not present in the parent ‘434 application. Thus, the relevant date of Fig. 28 and the description thereof as a reference under 35 U.S.C. §102 is the filing date of the ‘257 application.

As noted above, Applicants filed a petition under 37 C.F.R. §1.78(a)(3) to accept an unintentionally delayed claim under 35 U.S.C. §120 for the benefit of Serial No. 09/941,357, filed August 28, 2001. In contrast, the cited reference is entitled only to the filing date of the ‘257 application, October 12, 2001, which is after the priority date of the present application. Thus, cited reference is not prior art under 35 U.S.C. §102(b), and the rejection is not maintainable.

Applicants request reconsideration and withdrawal of the rejection of claims 35, 36, and 43 under 35 U.S.C. §102(b) in view of the above remarks.

Claim Rejections under 35 U.S.C. §103

Claims 37 and 45 were rejected under 35 U.S.C. §103(a) as being unpatentable over Ortyn et al. (US20020071121A1). Applicants traverse the rejection for the reasons set forth below.

The rejection of claims 37 and 45 under 35 U.S.C. §103(a) was based on the same description within Ortyn et al. (the detector apparatus shown in Fig. 28 and the

description thereof in paragraph [0127]) relied upon as the basis of the rejection of claims 35, 36, and 43 under 35 U.S.C. §102(b). As discussed above, the Ortyn et al. reference was filed after the priority date of the present application, and the description upon which the rejection was based is not entitled to an earlier priority date. Thus, the cited reference is not prior art under 35 U.S.C. §103(a), and the rejection is not maintainable.

Applicants request reconsideration and withdrawal of the rejection of claims 37 and 45 under 35 U.S.C. §103(a) in view of the above remarks.

Objection to Claims 38-42 and 44

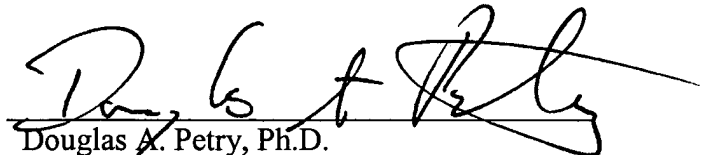
Claims 38-42 and 44 were objected to as being dependent upon a rejected base claim. As discussed above, Applicants believe that the rejections of the base claims were made over a reference filed after the priority date of the present application, and that the rejections are not proper and should be withdrawn. Applicants request reconsideration and withdrawal of the objection to claims 38-42 and 44 in view of the traversal of the rejections of the base claims.

Conclusion

Applicants believe that the rejections and objections applied to the claims have been overcome and that the present application is now in condition for allowance.

Respectfully submitted,

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Date



Douglas A. Petry, Ph.D.
Reg. No. 35,321
Agent for Applicants
Customer No. 26253
Tel: (408) 518-5074
Fax: (408) 432-6493